

Department of the Treasury

§ 403.4

as modified by § 403.2 (a), (b) and (c), with § 240.15c2-1 of this title (SEC Rule 15c2-1), with § 240.15c3-2 of this title (SEC Rule 15c3-2), as modified by § 403.3, and with § 240.15c3-3 of this title (SEC Rule 15c3-3), as modified by § 403.4 (a) through (d), (f)(2) through (3), (g) through (j), and (m), including provisions in those rules relating to OTC derivatives dealers, constitutes compliance with this part.

[71 FR 54411, Sept. 15, 2006]

§ 403.2 Hypothecation of customer securities.

Every registered government securities broker or dealer shall comply with the requirements of § 240.8c-1 of this title concerning hypothecation of customer securities with the following modifications:

(a) In § 240.8c-1(a), the words “no government securities broker or dealer” shall be substituted for the words “no member of a national securities exchange, and no broker or dealer who transacts a business in securities through the medium of such member.”

(b) Section 240.8c-1(d) is modified to read as follows:

“(d) *Exemption for clearing liens.* The provisions of paragraphs (a)(2), (a)(3) and (f) of this section shall not apply to any lien or claim of a clearing bank, or the clearing corporation (or similar department or association) of a national securities exchange or a registered national securities association, for a loan made to acquire any securities subject to said lien and to be repaid on the same calendar day, which loan is incidental to the clearing of transactions in securities or loans through such bank, corporation, department or association; *provided, however*, that for the purpose of paragraph (a)(3) of this section, ‘aggregate indebtedness of all customers in respect of securities carried for their accounts’ shall not include indebtedness in respect of any securities subject to any lien or claim exempted by this paragraph.”

(c) References to “member, broker or dealer” mean “government securities broker or dealer.”

§ 403.3 Use of customers’ free credit balances.

Every registered government securities broker or dealer shall comply with the requirement of § 240.15c3-2 of this title concerning the use of customer free credit balances. For purposes of this section, all references to “broker or dealer” in § 240.15c3-2 shall include government securities brokers and dealers.

§ 403.4 Customer protection—reserves and custody of securities.

Every registered government securities broker or dealer shall comply with the requirements of §§ 240.15c3-3 and 240.15c3-3a of this title (SEC Rule 15c3-3 and Exhibit A thereto), with the following modifications:

(a) References to “broker or dealer” include government securities brokers and dealers.

(b) “Fully paid securities,” as defined in § 240.15c3-3(a)(3) of this title, includes all securities held by a government securities broker or a government securities dealer for the account of a customer who has made full payment for such securities.

(c) “Margin securities,” as defined in § 240.15c3-3(a)(4) of this title, includes any securities for which a customer has not made full payment and for which the customer has received an extension of credit by a government securities broker or government securities dealer for a portion of the purchase price.

(d) “Excess margin securities,” as defined in § 240.15c3-3(a)(5) of this title, includes margin securities carried for the account of a customer having a market value in excess of 140 percent of the total of the debit balances in the customer’s account or accounts with the broker or dealer.

(e) For purposes of this section, § 240.15c3-3(b)(3)(iii)(A) of this title is modified to read as follows:

(A) Must provide to the lender upon the execution of the agreement, or by the close of the business day of the loan if the loan occurs subsequent to the execution of the agreement, collateral that fully secures the loan of securities, consisting exclusively of cash or United States Treasury bills or Treasury notes or an irrevocable letter of

credit issued by a bank as defined in §3(a)(6)(A)–(C) of the Act (15 U.S.C. 78c(a)(6)(A)–(C)) or such other collateral as the Secretary designates as permissible by order as consistent with the public interest, the protection of investors, and the purposes of the Act, after giving consideration to the collateral's liquidity,

(f)(1) For purposes of this section, §240.15c3-3(b)(4)(i)(C) is modified to read as follows:

“(C) Advise the counterparty in the repurchase agreement that the Securities Investor Protection Act of 1970 will not provide protection to the counterparty with respect to the repurchase agreement.”

(2) For purposes of this section, §240.15c3-3(b)(4)(ii) is modified to read as follows:

“(ii) For purposes of this paragraph (4), securities are in the broker's or dealer's control only if they are in the control of the broker or dealer within the meaning of §240.15c3-3(c)(1), (c)(3), (c)(5), (c)(6), or §403.4(f) of this title.”

(3) For purposes of this section, §240.15c3-3(b)(4)(iv) is redesignated §240.15c3-3(b)(4)(iv)(A) and paragraph (b)(4)(iv)(B) is added to read as follows:

“(B) A person that is a non-U.S. citizen residing outside of the United States or a foreign corporation, partnership, or trust may waive, but only in writing, the right to receive the confirmation required by paragraph (b)(4)(i)(B) of this section.”

(g)(1) Securities under the control of a broker or dealer, as described in §240.15c3-3(c) of this title, shall include securities maintained by a broker or dealer in an account at a depository institution, as defined in section 19(b)(A)(i)–(vi) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)–(vi)), which depository institution has a book-entry securities account at a Federal Reserve Bank through which it provides clearing services (“clearing bank”), provided the securities are maintained in a Segregated Account of the government securities broker or dealer. For purposes of this paragraph (f)(1) and paragraph (h) of this section, a Segregated Account is an account (other than a clearing account) of the government securities broker or dealer maintained on the books of a clearing

bank pursuant to a written clearing agreement with such clearing bank which provides that:

(i) Such account is established for the purpose of segregating securities of counterparties or customers of such broker or dealer from proprietary securities of the broker or dealer;

(ii) The broker or dealer is entitled to direct the disposition of the securities; and

(iii) The clearing bank does not have, and will not assert, any claim or lien against such securities nor will the clearing bank grant any third party, including any Federal Reserve Bank, any interest in such securities so long as they are maintained in the segregated account.

(2) For purposes of this section, §240.15c3-3(c)(2) of this title is redesignated as paragraph (c)(2)(i) and new paragraph (c)(2)(ii) is added to read as follows:

“(ii) Are carried for the account of any customer by a government securities broker or dealer in an account designated exclusively for customers of the government securities broker or dealer with a registered broker or dealer or another registered government securities broker or dealer (the “carrying broker or dealer”) in compliance with instructions of the registered government securities broker or dealer to the carrying broker or dealer that the securities are to be maintained free of any charge, lien or claim of any kind in favor of the carrying broker or dealer or any persons claiming through such carrying broker or dealer; or”.

(h) For the purposes of this section, §240.15c3-3(d)(2) of this title is modified to read as follows:

“(2) Securities included on its books or records as failed to receive more than 30 calendar days, or in the case of mortgage-backed securities, more than 60 calendar days, then the government securities broker or government securities dealer shall, not later than the business day following the day on which such determination is made, take prompt steps to obtain possession or control of securities so failed to receive through a buy-in procedure or otherwise; or”

(i) In addition to the notification required by § 240.15c3-3(i) of this title, whenever any government securities broker or dealer instructs its clearing bank to place securities in a Segregated Account (as defined in paragraph (f)(1) of this section), and the clearing bank refuses to do so as of the close of business on that day, the broker or dealer shall, in accordance with § 240.17a-11(f) of this title, give telegraphic notice of the notification by the clearing bank within 24 hours and within 48 hours of the telegraphic notice, file a report stating what steps are being taken to correct the situation.

(j) For purposes of this section, § 240.15c3-3(l) of this title is modified to read as follows:

“(1) *Delivery or disposition of securities.* Nothing stated in this section shall be construed as affecting the absolute right of a customer of a government securities broker or dealer, unless otherwise agreed in writing, in the normal course of business operations following demand made on the broker or dealer, to receive the physical delivery of certificates if the securities are issued in certificated form, or to direct a transfer of or otherwise to exercise control over any securities if they are:

“(1) Fully-paid securities to which the customer is entitled;

“(2) Margin securities upon full payment by such customer to the broker or dealer of the customer's indebtedness to the broker or dealer; or

“(3) Excess margin securities not reasonably required to collateralize such customer's indebtedness to the broker or dealer.”.

(k) Except with respect to a government securities interdealer broker subject to the financial responsibility requirements of § 402.1(e) and a registered government securities broker or dealer that is a futures commission merchant registered with the CFTC, § 240.15c3-3(e)(3) is modified for purposes of this section to read as follows:

“(3) Computations necessary to determine the amount required to be deposited as specified in paragraph (e)(1) of this section shall be made weekly, as of the close of the last business day of the week, and the deposit so computed

shall be made no later than 1 hour after the opening of banking business on the second following business day; provided, however, a government securities broker or dealer registered pursuant to section 15C(a)(1)(A) of the Act (15 U.S.C. 78o-5 (a)(1)(A)) which has a ratio of liquid capital to total haircuts (calculated in accordance with part 402 of this chapter) of 1.8 or greater and which carries aggregate customer funds (as defined in paragraph (a)(10) of this section), as computed at the last required computation pursuant to this section, not exceeding \$1 million, may in the alternative make the computation monthly, as of the close of the last business day of the month, and, in such event, shall deposit not less than 105 percent of the amount so computed no later than 1 hour after the opening of banking business on the second following business day. If a registered government securities broker or dealer, computing on a monthly basis, has, at the time of any required computation, a ratio of liquid capital to total haircuts of less than 1.8, such broker or dealer shall thereafter compute weekly as aforesaid until four successive weekly computations are made, none of which were made at a time when its ratio of liquid capital to total haircuts was less than 1.8. Computations in addition to the computation required in this paragraph (3), may be made as of the close of any other business day, and the deposits so computed shall be made no later than 1 hour after the opening of banking business on the second following business day. The registered government securities broker or dealer shall make and maintain a record of each such computation made pursuant to this paragraph (3) or otherwise and preserve such record in accordance with § 240.17a-4.”.

(l) Except with respect to a government securities interdealer broker subject to the financial responsibility requirements of § 402.1(e) and a registered government securities broker or dealer that is a futures commission merchant registered with the CFTC, Note E(5) of § 240.15c3-3a of this title is modified for purposes of this section to read as follows:

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“(5) Debit balances in margin accounts (other than omnibus accounts) shall be reduced by the amount by which any single customer’s debit balance exceeds 25% (to the extent such amount is greater than \$50,000) of the government securities broker’s or dealer’s liquid capital unless such broker or dealer can demonstrate that the debit balance is directly related to credit items in the Reserve Formula. Related accounts (e.g., the separate accounts of an individual, accounts under common control or subject to cross guarantees) shall be deemed to be a single customer’s accounts for purposes of this provision.”.

(m) For purposes of this section, the suspension of §240.15c3–3(m) of this title (38 FR 12103, May 9, 1973) is no longer effective and the paragraph is modified to read as follows: “(m) If a government securities broker or government securities dealer executes a sell order of a customer (other than an order to execute a sale of securities which the seller does not own, which for the purposes of this paragraph shall mean that the customer placing the sell order has identified the sale as a short sale to the government securities broker or dealer) and if for any reason whatever the government securities broker or government securities dealer has not obtained possession of the government securities, other than mortgage-backed securities, from the customer within 30 calendar days, or in the case of mortgage-backed securities within 60 calendar days, after the settlement date, the government securities broker or government securities dealer shall immediately thereafter close the transaction with the customer by purchasing, or otherwise obtaining, securities of like kind and quantity. For purposes of this paragraph (m), the term “customer” shall not include a broker or dealer who maintains a special omnibus account with another broker or dealer in com-

pliance with section 4(b) of Regulation T (12 CFR 220.4(b)).

(Approved by the Office of Management and Budget under control number 1535–0089)

[52 FR 27947, July 24, 1987, as amended at 53 FR 28986, Aug. 1, 1988; 59 FR 9406, Feb. 28, 1994; 60 FR 18734, Apr. 13, 1995; 69 FR 33259, June 14, 2004]

§ 403.5 Custody of securities held by financial institutions that are government securities brokers or dealers.

(a) A government securities broker or dealer that is a financial institution shall:

(1) Comply with part 450 with respect to all government securities held for the account of customers of the financial institution in its capacity as a fiduciary or custodian (unless otherwise exempt pursuant to §450.3); and

(2) Comply with part 450 and with paragraphs (b), (c) and (d) of this section with respect to all fully paid and excess margin government securities held for customers of the financial institution in its capacity as government securities broker or dealer, and government securities that are the subject of a repurchase agreement between the financial institution and certain counterparties as described in paragraph (d) of this section.

(b) A financial institution shall not be in violation of the possession or control requirements of paragraphs (c) and (d) of this section if, solely as the result of normal business operations, temporary lags occur between the time when a security is first required to be in the financial institution’s possession or control and the time when it is actually placed in possession or control, provided that the financial institution takes timely steps in good faith to establish prompt possession or control. In the event that a financial institution has accepted funds from a customer for the purchase of securities and the financial institution does not initiate the purchase of the specified securities by the close of the next business day after receipt of such customer’s funds, the financial institution shall immediately deposit or redeposit the funds in an account belonging to such customer and send the customer notice of such deposit or redeposit.